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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

15 NETFLIX, INC., a Delaware corporation, 16 17 v. 18 BLOCKBUSTER, INC., a Delaware 19 corporation, DOES 1-50, 20 21 AND RELATED COUNTERCLAIMS	Plaintiff, Defendant.	Case No. C 06 2361 WHA (JCS) DECLARATION OF MARSHALL B. GROSSMAN Hearing Date: TBD Time: 9:30 A.M. Courtroom: A, 15th Floor Magistrate Judge: Joseph C. Spero Complaint Filed: April 4, 2006
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1 I, Marshall B. Grossman, declare as follows:

2 I am a partner in the law firm of Alschuler Grossman LLP, the attorneys of record herein
3 for Defendant and Counterclaimant Blockbuster Inc. ("Blockbuster") in this action, and have
4 personal knowledge of each and all of the facts stated in this declaration. If called to testify as a
5 witness, I could and would do so competently.

6 1. Have you ever expressed any opinion on the validity of either the '450 patent or
7 '381 patent at issue in this case?

8 **Answer:** No

9 • How often?
10 • When?
11 • To whom?
12 • Was that opinion expressed orally or in writing?
13 • If in writing, was the writing preserved?

14 2. Have you ever mentioned the opinion letter written by Baker & Botts as to the
15 validity of the '450 patent to anyone at Blockbuster?

16 **Answer:** No, however, Blockbuster mentioned the existing opinion to me.

17 • How often?

18 **Answer:** Inception of the litigation

19 • When?

20 **Answer:** Inception of the litigation

21 • To whom?

22 **Answer:** Judy Norris

23 • Was that comment expressed orally or in writing?

24 **Answer:** Orally

25 • If in writing, was the writing preserved?

26 3. Have you mentioned the opinion letter written by Blakely Sokoloff Taylor &
27 Zafman as to the validity of the '381 patent to anyone at Blockbuster?

28

Answer: No, other than in the context of Netflix's subpoena of the Alschuler Grossman law firm.

- How often?
- When?
- To whom?
- Was that comment expressed orally or in writing?
- If in writing, was the writing preserved?

8 4. Have you ever discussed with anyone at Blockbuster the general subject matter of
9 the validity of the '381 patent?

10 | Answer: Yes

• How often?

Answer: Over the course of the litigation

• When?

Answer: Over the course of the litigation

- To whom?

Answer: Judy Norris and Bryan Stevenson

- Was that discussion oral or in writing?

Answer: Oral

- If in writing, was the writing preserved?

20 5. Have you ever discussed with anyone at Blockbuster the general subject matter of
21 the validity of the '450 patent?

22 | Answer: Yes

- How often?

Answer: Over the course of the litigation

• When?

Answer: Over the course of the litigation

• To whom?

1 **Answer:** Judy Norris and Bryan Stevenson

2 • Was that discussion oral or in writing?

3 **Answer:** Oral

4 • If in writing, was the writing preserved?

5 6. Have you made any comment to anyone at Blockbuster about the evidence
6 concerning the validity of the '381 patent?

7 **Answer:** Yes

8 • How often?

9 **Answer:** Over the course of the litigation

10 • When?

11 **Answer:** Over the course of the litigation

12 • To whom?

13 **Answer:** Bryan Stevenson, Judy Norris, and the Board of Directors and
14 members thereof

15 • Was that comment made orally or in writing?

16 **Answer:** Orally

17 • If in writing, was the writing preserved?

18 7. Have you made any comment to anyone at Blockbuster about the evidence
19 concerning the validity of the '450 patent?

20 **Answer:** Yes

21 • How often?

22 **Answer:** Over the course of the litigation

23 • When?

24 **Answer:** Over the course of the litigation

25 • To whom?

26 **Answer:** Bryan Stevenson, Judy Norris, and the Board of Directors and
27 members thereof

28

1 • Was that comment made orally or in writing?

2 **Answer:** Orally

3 • If in writing, was the writing preserved?

4 8. Have you had any communications with anyone in your office commenting on
5 conversations with Blockbuster that in any way related to the validity of the '381 patent?

6 **Answer:** Yes

7 • How often?

8 **Answer:** Over the course of the litigation

9 • When?

10 **Answer:** Over the course of the litigation

11 • To whom?

12 **Answer:** I don't recall specific conversations, but any conversations
13 would have been with Bill O'Brien, Tony Chen, and/or Dominique Thomas

14 • Was that communication oral or in writing?

15 **Answer:** Both oral and in writing

16 • If in writing, was the writing preserved?

17 **Answer:** Yes

18 9. Have you had any communications with anyone in your office commenting on
19 conversations with Blockbuster that in any way related to the validity of the '450 patent?

20 **Answer:** Yes

21 • How often?

22 **Answer:** Over the course of the litigation

23 • When?

24 **Answer:** Over the course of the litigation

25 • To whom?

26 **Answer:** I don't recall specific conversations, but any conversations
27 would have been with Bill O'Brien, Tony Chen, and/or Dominique Thomas

- Was that communication oral or in writing?

Answer: Both oral and in writing

- If in writing, was the writing preserved?

Answer: Yes

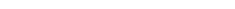
5 10. Have you ever discussed the likelihood that either the '450 patent or the '381
6 patent will be found to be valid?

Answer: No

- How often?
- When?
- To whom?
- Was that opinion discussion oral or in writing?
- If in writing, was the writing preserved?

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 27, 2007 in Los Angeles, California.



Marshall B. Grossman

PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the County of Los Angeles, California at 355 South Grand Avenue, Suite 4400, Los Angeles, California 90071-3106. I am readily familiar with the practice of this office for collection and processing via electronic transmission that same day in the ordinary course of business.

Today I served the attached:

DECLARATION OF MARSHALL B. GROSSMAN

(BY ELECTRONIC TRANSMISSION) This document was transmitted, without exhibits, by electronic transmission from ryan.nishimoto@bingham.com and the transmission was reported as complete and without error. I then caused the transmitting e-mail account to properly issue a report confirming the electronic transmission.

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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on April 27, 2007.



Ryan M. Nishimoto